> When section 247 has been complied with, the court appealed from shall transmit to the High Court and to the Public Prosecutor or to the respondent or his advocate, as the case may be, a signed copy of the record of the proceedings and of the grounds of the decision together with a copy of the notice and of the petition of appeal.

At the commencement of the hearing of the appeal, the deputy public prosecutor appeared and submitted that the notice of appeal should be rejected by this court and that, at any rate, the Public Prosecutor was intervening to withdraw the appeal. He relied on cl 8 of art 35 of the Constitution of the Republic of Singapore which provides:

> The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.

He then submitted that the appeal being a criminal matter it did not follow that the appellant nor her counsel had any right to appear to argue the appeal. He submitted that s 247(1) of the Code should be read with s 336 of the Code, sub-s (1) of which reads:

> The Attorney General shall be the Public Prosecutor and shall have the control and direction of criminal prosecutions and proceedings under this Code.

It is also relevant for present purposes to reproduce below s 336(4), (5), (6) and (8) of the Code:

> (4) The Public Prosecutor or the Solicitor General or a person appointed a deputy under subsection (3) may authorize any advocate to act for him as Public Prosecutor in the conduct of any case or prosecution in court or in any part of such conduct.
>
> (5) Every criminal prosecution before the High Court shall be conducted by the Public Prosecutor or by the Solicitor General or by a deputy appointed under subsection (3) or by an advocate authorized under subsection (4).
>
> (6) No person shall appear on behalf of the Attorney General in any criminal appeal or on any point of law reserved under Chapter XXIX other than the Public Prosecutor or the Solicitor General or a deputy appointed under subsection (3) or an advocate authorized under subsection (4).
>
> .....
>
> (8) Nothing in this section shall be held to preclude private persons or any officer of any government department from appearing in person or by advocate to prosecute in summary cases before a Magistrate's Court or in summary non-seizable cases before a District Court.

It will be seen that s 336(8) enables a private person to appear in person or by his counsel to prosecute in a summary case before a Magistrate's Court, as was what had happened in this case.

Counsel for the appellant contended that s 336(8) of the Code is a saving section and not an enabling section and that on a reading of s 247(1) the appellant, being a 'party' to the criminal matter below, should not only have the right of appeal but a right of audience either by herself in person or by counsel.

In my view, the Public Prosecutor under s 336(1) of the Code has 'the control and direction of ... proceedings under' the Code and since the appeal before me is a proceeding under the Code, the Public Prosecutor could properly in his discretion intervene and withdraw the appeal. His discretion is entrenched in art 35(8) of the Constitution. Further, as a matter of principle, it must be recognized, as it was in *Ponniah* v *Lim*,[1] that the interests of the state in a criminal matter which are entrusted to the Public Prosecutor are not always the same as those of a complainant who may allow his 'private passions and prejudices to creep into the conduct' of a criminal appeal.

The appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: *Lim Ganesh & Liu*; *Rajan Nair.*

Reported by *Ng Sheau Jiuan*

Tan Ah Kwee v Region Development Pte Ltd

HIGH COURT (SINGAPORE) – SUIT NO 177 OF 1988
CHAO HICK TIN JC
22 AUGUST 1988

Civil Procedure – Discharge of interim injunction given to plaintiff – Application for – Plaintiff alleged ownership of premises – Defendants were bona fide purchasers in good faith – Whether defendants affected by alleged equity of plaintiff – Whether there exists serious question to be tried – Whether damages would be adequate remedy – Balance of convenience

The plaintiff claimed for an injunction to restrain the defendants from damaging or demolishing the building comprising premises known as 4R, 4S and 4T, and damages. The plaintiff alleged that he was the owner of the structures of premises 4R, 4S and 4T and that he had been residing at 4S for more than 25 years prior to the commencement of the action. An interim injunction was granted to the plaintiff. The defendants, as the purchasers and new owners of the land, now apply to have the interim injunction discharged or, alternatively, the injunction to be discharged in so far as premises 4R and 4T were concerned.

Held, allowing the defendants' application to discharge the interim injunction:

(1) The general rule is that it is not for the court at this stage of the proceedings to resolve a conflict of evidence on affidavits as to facts. But where on the plaintiff's own evidence nothing was shown that he was the owner of the structures of premises 4R, 4S and 4T and where he has also failed to show in any respect that the defendants' rights as a bona fide purchaser in good faith of the said land were affected by the alleged equity of the plaintiff, there was accordingly no serious question to be tried.

(2) The claim based on ownership of the structures was frivolous. The plaintiff had no equity enforceable against the

defendants. There was nothing to show that the plaintiff had any real prospect of succeeding in his claim for a permanent injunction at the trial as regards premises 4R and 4T.

(3) As regards premises 4S, the plaintiff was and still is residing there. There was at least one serious question to be tried, ie his claim to adverse possession, having resided therein as claimed by the plaintiff for more than 25 years. Therefore, the interim injunction in respect of premises 4S is allowed to continue.

(4) The question of whether damages would be an adequate remedy is resolved in the defendants' favour as the plaintiff did not deny that its (plaintiff's) primary concern was to be paid a fair and reasonable compensation and there was no allegation that the defendants would not be in a financial position to pay whatever damages that might be assessed against the defendants.

(5) On the facts of this case, the balance of convenience was clearly in favour of the defendants who were the developers. Any unnecessary injunction would cause delay in the development of the said land. The injury which the defendants would suffer would be immense and difficult to assess.

[*Editorial Note*: In the judgment of Chao Hick Tin JC, it was indicated that the plaintiff had appealed against the court's order. This appeal has now been withdrawn.]

Case referred to

1 *American Cyanamid Co* v *Ethicon Ltd* [1975] 1 All ER 504 (folld)

BT Tan for the plaintiff.
Anne Duray (*Ms*) for the defendants.

Cur Adv Vult

Chao Hick Tin JC: By this action the plaintiff claimed for an injunction to restrain the defendants from damaging or demolishing the building consisting of premises known as 4R, 4S and 4T, Jalan Ampas, Singapore. The plaintiff also claimed for damages.

The plaintiff alleged that he was the owner of the structures of premises 4R, 4S and 4T and that he had been residing at 4S for more than 25 years prior to the commencement of the action.

On an ex parte application in chambers, an interim injunction was granted on 25 January 1988 to the plaintiff restraining the defendants from damaging, demolishing and/or destroying the building comprising premises 4R, 4S and 4T. The defendants applied to have the interim injunction discharged or alternatively the injunction discharged in so far as premises 4R and 4T were concerned. Having heard the parties on 16 May 1988, I discharged the injunction as regards premises 4R and 4T. The plaintiff was dissatisfied with this order and has appealed. I now give my reasons.

It appeared from the photograph exhibited in the affidavit filed in these proceedings that 4R, 4S and 4T were three adjoining single-storey terraced premises. They were erected on Lot 221, Mukim 17, which contained an area of 62,563 sq ft (hereinafter called 'the said land'). The said land was bought by the plaintiff's grandmother, one Low Soon Kim, on 7 January 1938. Then, there was only one shophouse built on it known as No 4, Jalan Ampas. The plaintiff claimed that subsequently (date not specified) his grandmother built ten more zinc-roofed buildings on the said land, each building divided into several units. The plaintiff alleged that these were rent-controlled premises.

The said land was on 8 October 1953 conveyed by the plaintiff's grandmother to her three sons, Tan Bak Song (the father of the plaintiff), Tan Bak Meng and Tan Bak Liang. The said three sons were also the owners of Lot 2743, Mukim 17 ('Lot 2734'). By a deed of exchange effected on 9 November 1972, there was a land swop whereby Tan Bak Song (the father of the plaintiff) became the sole owner of Lot 2734 and Tan Bak Meng and Tan Bak Liang became the owners of the said land. The said land was, on or about 15 October 1987, sold by their owners to Tai Win Realty Pte Ltd, which in turn sold it to the defendants on 19 November 1987. As regards Lot 2734, it was, on 4 January 1974, conveyed by Tan Bak Song to the plaintiff and two others, Tan Ah Kou and Tan Ah Aye. On 1 October 1987, the plaintiff and the two others sold and transferred Lot 2734 to Ban Lee Investments (Pte) Ltd.

It was not disputed that the plaintiff was (and still is) residing at premises 4S. It was also not disputed that at the relevant time, premises 4R and 4T were occupied by other tenants who moved out after receiving compensation from the defendants. The plaintiff, however, claimed ownership to the structures of all three premises on the ground that his grandmother, the said Low Soon Kim, who was then the owner of the said land, had at his wedding party on 18 June 1952, gave the whole building (consisting of premises 4R, 4S and 4T) to the plaintiff as his wedding present for a matrimonial home. In the alternative, the plaintiff claimed ownership to that part of the said land, on which the structures stood, on the ground of adverse possession.

Serious questions to be tried?

All that was before me was a bare assertion by the plaintiff (supported by a family friend, one Chan Kim Suan) that his grandmother, by word of mouth uttered on his wedding day, was going to give him the building consisting of premises 4R, 4S and 4T. Even if there was such an oral promise, nothing had been done to give effect to it: it was not carried out. Instead, as stated above, what occurred was that the grandmother, in 1953, transferred the said land, together with all the premises thereon, to her three children, Tan Bak Song, Tan Bak Meng and Tan Bak Liang. It was of significance that the deed of conveyance referred only to 'the messuage or dwelling house erected thereon and known as No 4, Jalan Ampas, Singapore'. No mention was made in the deed of the other ten

buildings which were allegedly built thereon by the plaintiff's grandmother before September 1947. Accordingly, the alleged oral gift by the grandmother in 1952 could hardly be true.

Other documents produced also showed that the plaintiff's claim to ownership of the structures was without any basis. In the Property Tax Department, Tan Bak Liang was listed as the owner of premises 4R and 4S. In the case of premises 4T, the tenant, one Pang Chew Fui, was on the record of the department as the person liable to pay property tax. The rent receipts issued by Tan Bak Liang were for *ground* rents and not for rents, which indicated that the structures did not belong to the plaintiff or his uncle Tan Bak Liang. To explain why the receipts were not issued by him, the plaintiff said that as a matter of convenience, he had asked his uncle Tan Bak Liang to collect rents on his behalf from the tenants occupying premises 4R and 4T. That was a bald assertion not supported by any evidence.

The defendants, as the purchasers and new owners of the said land, were the owners of all structures thereon subject only to the rights of any tenant to protection under the Control of Rent Act or any prior equity of any person of which the defendants knew or ought to have known. Indeed in the indenture of conveyance dated 15 October 1987, premises 4R, 4S and 4T were, among others, expressly conveyed to the purchasers. No evidence had been produced to show that the defendants, a bona fide purchaser in good faith, knew or ought to have known that the plaintiff was the owner of the structures of the premises 4R, 4S and 4T. I did not think that as a bona fide purchaser in good faith and without notice of the plaintiff's alleged equity, the defendants were affected by it.

I appreciated that it was not for this court at this stage of the proceedings to resolve the conflict of evidence on affidavits as to facts. But where on the plaintiff's own evidence nothing was shown that he was the owner of the structures of premises 4R, 4S and 4T and where he had also failed to show in any respect that the defendants' rights as a bona fide purchaser in good faith of the said land were affected by the alleged equity of the plaintiff, there was accordingly no serious question to be tried. On the plaintiff's own evidence he had been residing only at premises 4S but not at 4R and 4T. Even if the Control of Rent Act applied, the plaintiff could only claim protection thereunder in respect of premises 4S. He did not deny that the tenants who were staying at premises 4R and 4T had moved out after being paid off by the defendants (see para 16 of the affidavit of the plaintiff filed on 11 May 1988).

For the aforesaid reasons, I was of the view that the claim based on ownership of the structures was frivolous. The plaintiff had no equity enforceable against the defendants. Accordingly, I did not think there was any basis whatsoever for continuing the injunction in so far as premises 4R and 4T were concerned. There was nothing to show that the plaintiff had any real prospect of succeeding in his claim for a permanent injunction at the trial as regards premises 4R and 4T.

However, as regards premises 4S, the plaintiff was (and still is) residing there. There was at least one serious question to be tried, ie his claim to adverse possession, having resided therein as claimed by the plaintiff for more than twenty five years. Therefore, I allowed the injunction to continue in respect of premises 4S.

Whether damages an adequate remedy and balance of convenience

Even if I should be wrong as regards the position of the plaintiff's claim to ownership of the structures of 4R and 4T, the next question was whether damages would be an adequate compensation for the plaintiff. The law on this was set out by Lord Diplock in *American Cyanamid Co* v *Ethicon Ltd*[1] at p 510 as follows:

> ... the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage.

In his arguments before me, counsel for the plaintiff did not deny that the plaintiff's primary concern was to be paid a fair and reasonable compensation. In para 2 of the plaintiff's affidavit filed herein on 25 January 1988, he stated that 'the defendants have recently bought the land without vacant possession. Accordingly the defendants were obliged to pay compensation to all occupiers of the said land.' There should be no difficulty in assessing a fair monetary value for the structures of 4R and 4T. Indeed, at the close of the hearing but before making the order, when I indicated that I was inclined to discharge the interim injunction in so far as premises 4R and 4T were concerned, counsel for the plaintiff asked that the lifting of the interim injunction, if I were so inclined, be deferred for a month to enable the plaintiff to seek a valuer to evaluate the worth of the structures. I acceded to this request though I only granted a two-week deferment as I thought that that would be more than sufficient for a valuation to be made.

There was no allegation that the defendants would not be in a financial position to pay whatever damages that might be assessed against the defendants. On the

contrary, it was clear that the defendants would be in a position to pay the damages, if any, awarded in favour of the plaintiff.

24 *Halsbury's Laws of England*, 4th Ed, at para 956 states the following:

> Where any doubt exists as to the plaintiff's right ... in determining whether an interlocutory injunction should be granted, the court takes into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand, would suffer if the injunction was granted and he should ultimately turn out to be right, and that which the plaintiff, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right. The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies. The burden of proof that the inconvenience which the plaintiff will suffer by the refusal of the injunction is greater than that which the defendant will suffer if it is granted lies on the plaintiff.

On the facts of this case, to say that there were doubts as to the plaintiff's rights over the structures was to manifestly overstate the plaintiff's case. Be that as it may, applying the principles just quoted, I was of the view that the balance of convenience was clearly in favour of the defendants who were developers. Any unnecessary injunction would cause delay in the development of the said land. The injury which the defendants would suffer would be immense and difficult to assess.

Order accordingly.

Solicitors: *BT Tan & Co*; *Leo Fernando*.

Reported by *Ng Sheau Jiuan*

Bank of China v The First National Bank of Boston

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 429 OF 1986
LAI KEW CHAI J
18 AUGUST 1988

Land Law – Property mortgaged to plaintiff – Lapse of caveat lodged by plaintiff – Judgment for defendant against owner of property – Defendant obtained charging order against property – Defendant lodged caveat prior to fresh caveat of plaintiff – Competing claims over property – Whether charging order is not a caveatable 'interest in land' – Land Titles Act (Cap 157, 1985 Ed), ss 59(2), 104(4) & 114

Both parties are bankers and each claims that it has a prior claim over a piece of freehold property known as No 28, Coldstream Avenue, Singapore ('the property'). In April 1980, the plaintiff granted overdraft facilities to both Gojo Hartono and Anitawati Sustanto upon the equitable mortgages of the property, two shop units and another landed property. The equitable mortgage of the property in favour of the plaintiff was created by the agreement of Gojo Hartono who signed a confirmation of deposit of title deeds dated 24 April 1980. A caveat bearing No CV/38908 was lodged by the plaintiff which lapsed on 3 July 1985. The plaintiff had failed to lodge another caveat in good time until some 7 months 23 days after the expiry of the first caveat. Meanwhile, the defendant lodged a caveat to protect its interest on 30 November 1985. The defendant's caveat was therefore later than the creation of the equitable mortgage, but some 2 months and 24 days before the plaintiff lodged its fresh caveat on 26 February 1986.

The said Gojo Hartono and Anitawati Sustanto were also customers of the defendant. By a judgment of the High Court dated 29 November 1985, the said Gojo Hartono was ordered to pay the defendant two sums aggregating over US$3 million and interest. By order nisi made on 30 November 1985, the defendant obtained a charging order against the said property.

On 2 December 1985, the defendant lodged a caveat bearing No CV/21718A at the Registry of Titles claiming an interest in the property as 'chargee' by virtue of the above order nisi. On 22 January 1986, the order absolute imposing charge was granted by the High Court.

On 31 March 1986, the High Court on the application of the defendant ordered that the property be sold under its directions. On 4 April 1986, the order of sale was registered with the Registry of Titles. The plaintiff requested the defendant to withdraw its caveat but the defendant refused to do so. The plaintiff applied for reliefs.

Held, dismissing the plaintiff's application:

(1) Section 18(2)(d) of the Supreme Court of Judicature Act read with O 50 r 1 created a judicial charge over the property for securing the payment of the judgment debt.

(2) Section 114 of the Land Titles Act ('the Act') does not apply to a charging order and s 59(2) of the Act applies only to regulate charges which are capable of registration under the Act.

(3) The defendant had duly complied with the requirements of s 104(4) of the Act with regard to the description of its interest and the identification of the property and there is no merit in the plaintiff's criticisms of the caveat in question.

(4) The defendant had a charge which upon lodgment of the caveat took priority over the uncaveated interest of the plaintiff as an equitable mortgagee. The defendant's right to enforce its charge was accordingly not affected by all subsequent claims. Further, the order of court does not prejudice the plaintiff's claim, if any. Hence, there is no reason to set aside the order of court.

Cases referred to

1 *Eyre* v *McDowell* 11 ER 871 (refd)
2 *Ghana Commercial Bank* v *DT Chandiram & Anor* [1960] 3 WLR 328 (refd)
3 *Haji Abdul Rahman & Anor* v *Mahomed Hassan* [1917] AC 209 (folld)
4 *Fung Sin Wa* v *Moi Chan Hen* [1897] SSLR 175 (refd)
5 *Ng Boo Bee* v *Khaw Joo Choe* (1921) 14 SSLR 90 (refd)
6 *Chung Khiaw Bank Ltd* v *United Overseas Bank Ltd* [1970] 1 MLJ 185 (refd)
7 *Re Tan Kiong Hwa* [1972] 1 MLJ 239 (refd)
8 *Brereton* v *Edwards* (1888) 21 QBD 226 (refd)